

ARKANSAS SUPREME COURT

No. CR 06-374

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered

June 15, 2006

RAYMOND KING
a/k/a Raymond White
Appellant

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF CRITTENDEN COUNTY,
CR 2003-565, HON. DAVID N. LASER,
JUDGE]

v.

STATE OF ARKANSAS
Appellee

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

In 2004, a jury found Raymond King, who is also known as Raymond White, guilty of theft of property and he was sentenced to thirty years' imprisonment as a habitual offender. After trial, appellant's counsel filed a petition in the trial court for postconviction relief pursuant to Ark. R. Crim. P. 37.1 based on the trial court's lack of subject-matter jurisdiction, which the trial court denied. Appellant also filed his first *pro se* petition for Rule 37.1 relief after his trial counsel filed the original petition for postconviction relief based on a claim of ineffective assistance of counsel. The trial court denied appellant's first *pro se* petition in a separate order.

Appellant's counsel filed an untimely notice of appeal from both the judgment and commitment order and from the order denying counsel's petition for postconviction relief. Appellant did not appeal denial of his first *pro se* Rule 37.1 petition .

After tendering the record on appeal to this court, appellant's counsel filed a motion for belated appeal. We granted the motion. *King v. State*, 359 Ark. 274, ___ S.W.3d ___ (2004) (*per*

curiam). On appeal, we affirmed the judgment and commitment order and the trial court's denial of counsel's Rule 37.1 petition. *King v. State*, ___ Ark. ___, ___ S.W.3d ___ (April 14, 2005).

After the mandate was returned to the trial court, appellant filed a second verified *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 based on ineffective assistance of counsel. The trial court denied the petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from the order.

Now before us is appellant's *pro se* motion for extension of time to file his brief. We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because the petition filed in the trial court did not comport with the prevailing rules of procedure. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Criminal Procedure Rule 37.2(b) provides that all grounds for relief must be raised in the original petition filed under the rule. A petitioner is not entitled to file a second petition under the rule unless the original petition was specifically denied without prejudice as to filing a subsequent petition. Ark. R. Crim. P. 37.2(c); *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981). Here, when appellant's original Rule 37.1 petition filed by counsel was denied, it was denied with prejudice. This court affirmed the denial on appeal.

As appellant's second *pro se* Rule 37.1 petition filed in the trial court was an unauthorized subsequent petition, appellant was thus procedurally barred from proceeding again under the rule.

Appeal dismissed; motion moot.